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U.S. DISTRICT COURT  
DISTRICT OF WYOMING  
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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

EDITH COOK,

Plaintiff,

vs.

TOM VILSACK, United States Secretary  
of Agriculture, and UNITED STATES  
DEPARTMENT OF AGRICULTURE,

Defendants.

Case No. 13 CV 93-J

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**COMPLAINT FOR INJUNCTIVE RELIEF**

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Plaintiff, Edith Cook, by and through her attorney Timothy C. Kingston of the Law Office of Tim Kingston LLC, states for her Complaint as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, to order production of certain agency telephone records, originally received by the Department of Agriculture from its service provider, in order to ascertain the veracity of certain telephone calls between Plaintiff and the USDA Wheatland Service Center, Platte County Farm Service Agency (FSA) in Wheatland, Wyo. Defendant has improperly withheld said records from Plaintiff.
2. This court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

3. Plaintiff, Edith Cook is a resident of Wyoming and the requester of certain telephone records, unaltered by electronic redaction, which Defendant has withheld and withholds from the Plaintiff.

4. Defendant Department of Agriculture is an agency of the United States and has possession of the documents that Plaintiff seeks to obtain.

5. In this action, Plaintiff seeks certain copies of 2011 telephone records obtained by USDA employee Jeng F. Mao from Defendant's telephone service provider. Defendant promised Plaintiff that its Office of the General Counsel would forward hand-redacted records on receipt of payment. Plaintiff tendered the payment but Defendant forwarded only electronically adulterated copies, not copies of the original hand-redacted records requested by the Plaintiff.

6. Plaintiff first sought access to these records in October 2011, from Todd Even, USDA agent for Wyoming State FSA in Casper, Wyo. Plaintiff requested the records as evidence in an Appeal on file in USDA 2012W000006. Even informed Defendant by email that the records could not be obtained.

7. On May 7, 2012, Plaintiff sent an official FOIA request by registered mail to Even at Wyoming State FSA. Even forwarded the request to Steve Swieter of the same office. A copy of Plaintiff's FOIA request to Even is attached as Exhibit 1.

8. On August 2, 2012, Swieter sent Plaintiff 25 pages of telephone records. However, these records were electronically altered through a software program the agency uses to redact information from records requested by members of the public. A copy of the first page of the Swieter-redacted records is attached as Exhibit 2. The service provider's name and logo are absent from these records.

9. Plaintiff found that the records differ from the records provided by Plaintiff's cell-phone server as follows: Three calls from Platte County FSA in Wheatland to her cell phone were added by the Defendant in the redacted records. Three calls from her cell phone to Platte County FSA were deleted by the Defendant in the redacted records. A copy of records from Plaintiff's cell-phone provider, on file in USDA 2012W000006, is attached as Exhibit 3.

10. Plaintiff emailed Swieter regarding the discrepancies. Swieter responded by email, acknowledging he did the redacting but stated he "cannot explain the difference."

11. An easily-identifiable feature of Swieter's electronic redaction is this: Under "Date Time of Record" it shows "12:00 AM" for every call listed.

12. These are the three calls shown on the electronically-altered telephone records sent to Plaintiff that do not appear in Plaintiff's cell-phone records as having originated with Platte County FSA in Wheatland:

- a. On April 4 at 16:07:49, a call of two minutes, 44 seconds;
- b. On April 6 at 9:31:46, a call of five minutes, 57 seconds;
- c. On April 7 at 9:18:32, a call of three minutes, 55 seconds.

13. These are the three calls that appear on Plaintiff's cell-phone records as outbound to Platte County FSA in Wheatland that do not appear on the records provided by Defendant:

- a. On April 4 at 15:49, a call of 11 minutes;
- b. On April 4 at 16:06, a call of 1 minute;
- c. On April 5 at 10:02, a call of two minutes.

14. The missing April 5 call is attested by Defendant to have taken place. Affidavit of Pammie Rapp of Platte County FSA Office, dated October 19, 2011, on file in USDA

2012W000006, states under “4/5/2011” that “Edith called and stated that she was in the parking lot at the Cheyenne office and had a question for me.” A copy of Rapp’s Affidavit is attached as Exhibit 4.

15. Plaintiff contacted Defendant’s office in Washington, D.C. to address her ongoing requests. A Litsa Marinos instructed her to send a request for certification. Plaintiff was assured that Defendant’s attorney would work with unredacted records, provided Plaintiff paid for the service.

16. Plaintiff emailed Marinos a Request for Certification by USDA’s General Counsel of the calls set forth above. Plaintiff paid a total of \$60.

17. By date of September 24, 2012, Mark G. Garrett, Acting Assistant General Counsel, sent Plaintiff hard copy of the self-same 25 electronically-altered pages that Swieter had redacted. All pages bear the Swieter-feature of “12:00 AM.” Garrett’s beribboned green cover certifies the pages as “true and correct.”

18. Plaintiff again called Litsa Marinos, asserting that the response from Garrett failed to comply with her paid-for request. Plaintiff was told, however, that the office would undertake no further action.

19. Plaintiff contacted USDA’s Officer of Chief Information Office (OCIO), speaking and exchanging emails with FOIA Specialists Adam Abdi and Gregg Bridges. Plaintiff requested access to emails, and telephone records attached, sent from Defendant’s service provider to OCIO-ITS Specialist Jeng F. Mao, who had forwarded these records to Wyoming State FSA employee Steve Swieter for redaction.

20. By date of November 27, 2012, under cover letter of Ravoyne Payton, the agency sent Plaintiff copies of the Swieter electronically-altered records, denying access to some information on grounds that it is exempt from disclosure under 5 U.S.C. § 552(b)(6).

21. By letter dated December 7, 2012, Plaintiff appealed the denial of her request for the records. A copy of the letter is attached as Exhibit 5.

22. On February 1, 2013, Abdi telephoned Plaintiff, stating USDA would provide the requested material.

23. When no material arrived, Plaintiff telephoned Abdi on February 12 with an iPhone not her own, informing him that the conversation was being recorded and witnessed by a third party. Later that day, Plaintiff emailed Abdi the recorded conversation, which specifically requested copies of records as received by Mao from USDA's service provider, to be hand-redacted by Abdi. It further asks for the name of the telephone company that provides the service to Defendant, which Plaintiff had been trying to obtain since August 2012.

24. In his February 12, response, Abdi emailed Plaintiff that "The FOIA Service Center has completed the manual redaction, and will mail the phone records to your address."

25. On February 19, Abdi emailed an unreadable electronic version of the document. On February 22, under cover letter of Richard Coffee, Abdi's hard copies arrived at Plaintiff's address. They are difficult to decipher; still it is evident that the documents were not drawn from unredacted records. Like all earlier versions sent to Plaintiff in response to her many FOIA requests, of which the present chronology features only a few, Abdi's documentation bears the Swieter-feature of "12:00 AM." Copy of a page from Abdi's documentation is attached as Exhibit 6.

26. Abdi's claim is patently false. By comparing Exhibit 6 with Exhibit 2, it is clear that both are drawn from the same source. Both sets bear the Swieter-feature of "12:00 AM."

27. On March 19, 2013, Plaintiff telephoned Bridges, who claimed that USDA generates its own telephone data. Plaintiff requested a telephone conference with Jeng Mao.

28. By letter dated March 19, Coffee denied Plaintiff's request to speak with Mao. A copy of this letter is attached as Exhibit 7.

29. Plaintiff alleges that USDA's Acting Assistant General Counsel Garrett failed to address her FOIA request. Plaintiff alleges that Abdi, Bridges, and the staff at OCIO refused to address her FOIA request. Defendant continues to withhold the FOIA-requested records, originally obtained by Mao from USDA's service provider on or about August 1, 2012.

30. Plaintiff's original FOIA request for telephone records included the dates of March 1, 2011, through April 7, 2011. Since then, Plaintiff has narrowed her focus on the dates of April 4, 2011, through April 7, 2011. Plaintiff requests data and records on this limited period only.

31. In this action, Plaintiff asks the Court to order Defendant to provide to the Court the service provider's records for the period of April 4 through April 7, 2011, in fully unredacted form, including the portion thus far denied to Plaintiff, to wit: the origination numbers of calls designated as "inbound" on the records. The latter portion is needed to establish that Plaintiff's calls to Defendant during this period do appear on the records.

32. Plaintiff further asks the Court to order Defendant to provide the name and address of the service provider.

33. Plaintiff further requests that this Court conduct an in-camera review of these records, manually redacting all calls that do not pertain to Plaintiff's telephone number, to wit: (307) 220-3519, and thereafter, provide her the appropriate records identified in this Complaint.

34. This process is necessary to ascertain when and by whom the documents were altered to add/delete the telephone calls in question.

35. Plaintiff has the right to the requested information under 5 U.S.C. § 552(a)(3). There is no legal basis for Defendant's denial of such access.

WHEREFORE, Plaintiff requests this Court:

1. Order Defendant to provide the requested documents directly to the Court as set forth by the Court;
2. Award Plaintiff costs and reasonable attorneys fees in this action as provided in 5 U.S.C. § 552(a)(4)(E);
3. Grant such other and further relief as this Court may deem just and proper.

DATED this 30<sup>th</sup> day of April, 2013

EDITH COOK,  
Plaintiff.

By:



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